

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

05-CR-6097

v.

**ORDER**

ESTEBAN AYALA-ZUNIGA,

Defendant.

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By motion dated August 30, 2005, defendant Esteban Ayala-Zuniga moves to dismiss the Indictment in this criminal action, and to suppress certain statements. The government opposes defendant's motion. On November 8, 2005, United States Magistrate Judge Marian W. Payson held a suppression hearing to consider defendant's motion. By Report and Recommendation dated February 1, 2006, Magistrate Payson recommended that defendant's motion be denied. The parties were advised of their rights to file objections to the Report and Recommendation, but neither party has filed any objections.

Because neither party has filed an objection to the Report and Recommendation, the parties have waived their rights to de novo review pursuant to 28 U.S.C. § 636(b)(1). Small v. Secretary of Health and Human Services, 892 F.2d 15 (2nd Cir. 1989) ("failure to object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision).

I find that the Magistrate appropriately determined defendant's motions to suppress and to dismiss the indictment should be denied, and since there is no clear error in Judge Payson's Report and Recommendation, I affirm and adopt Judge Payson's February 1, 2006 Report and Recommendation in its entirety.

ALL OF THE ABOVE IS SO ORDERED.

S/ Michael A. Telesca

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Michael A. Telesca  
United States District Judge

DATED: Rochester, New York  
March 14, 2006